

**2009 DRAFTING REQUEST**

**Bill**

Received: **01/08/2009**

Received By: **tdodge**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Palchik**

This file may be shown to any legislator: **NO**

Drafter: **tdodge**

May Contact:

Addl. Drafters: **chanaman**

Subject: **Health - miscellaneous**

Extra Copies:

Submit via email: **NO**

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**Pre Topic:**

DOA:.....Palchik, BB0361 -

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**Topic:**

Wisconsin Quality Home Care Authority

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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**<END>**

## 2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Create a Wisconsin Quality Home Care Authority
- Tracking Code: BB0361
- SBO team: Health and Insurance
- SBO analyst: Laurie Palchik
  - Phone: 266-2214
  - Email: [laurie.palchik@wisconsin.gov](mailto:laurie.palchik@wisconsin.gov)
- Agency acronym: DHS
- Agency number: 435
- Priority (Low, Medium, High): High

Intent: See attached sequence of papers.

- 1) Analysis paper provides the concept and language.
- 2) 12/30/08 Proposal provides additional language or changes.
- 3) OSER's suggested revisions provides additional language or changes.
- 4) Citations – yes/no column indicates citations we would like included for the Authority

Please disregard any reference to a "Commission". Authority will be created.

If you would like to sit down and meet to discuss please let me know.

## **A Bill to Create the Wisconsin Quality Home Care Authority**

### **Analysis**

Thousands of Wisconsin's elderly citizens and people with disabilities continue to live independently in their own homes and avoid placement in institutions such as nursing homes only as the result of the availability of qualified home care workers who assist them with the essential activities of daily living. Many of Wisconsin's elderly citizens and people with disabilities cannot afford essential home care services and remain in their own homes only with assistance provided by the State and federal governments under the Medicaid program, Wisconsin's Family Care program, and other publicly funded programs.

The Wisconsin Department of Health and Family Services is responsible for state-wide administration and supervision of home care services provided under these programs while Counties and Care Maintenance Organizations, where established, are responsible for the delivery of home care services in their jurisdictions. Home care is not only the choice of most elderly citizens and people with disabilities, it is often less costly than institutional care. Consumers of these highly intimate and personal services should be permitted, to the extent they are able, to hire, terminate and supervise the individual providing the services in the consumer's home.

Home care workers too often receive low wages and minimal or no benefits, they have no career ladder, and they have no meaningful input into their terms and conditions of employment and no meaningful means of making suggestions for improvements in the publicly-funded program through which they provide services. The continued availability of quality home care services is threatened by a looming shortage of qualified home care workers due to the aging population in the State as well as low wages, a lack of benefits, and difficult working conditions. Poor working conditions also contribute to high turnover that impairs the continuity of care. The safety of home care services is threatened by the inadequacy of existing safeguards to protect Consumers from potentially abusive providers working in their homes.

The dispersal of duties among Consumers, Counties, Care Management Organizations, and the State has left no party with the responsibility and authority to address these serious workforce issues. Wisconsin has a national reputation as a leader in innovation in the provision of home care services to the elderly and disabled. The continued availability of high quality, safe home care services can be ensured through the creation of the Wisconsin Quality Homecare Authority and the vesting in the Authority of authority to investigate the quality, safety and availability of home care services, recruit qualified home care workers, establish qualifications for home care workers, improve the training of home care workers, establish a state-wide list of qualified home care workers, engage in collective bargaining with a representative of home care workers, and

set home care workers' wages and benefits.

The people of the state of Wisconsin, represented in the senate and assembly, do enact as follows:

**Section 1.** 46.2898 (1) of the statutes is created to read:

46.2898 (1) As used in this section, the following terms are defined as follows:

(a) "Authority" means the Wisconsin Quality Home Care Authority established by this Act.

(b) "Consumer" means a person receiving home care as a beneficiary under (i) the State of Wisconsin's Family Care program, Wis. Stat. §§ 46.2805 through 46.2895, or (ii) under the State of Wisconsin's Medicaid program or if the State awards funds to the Consumer who pays the Provider, directly or through a fiscal intermediary.

(c) "Department" means the Department of Health Services.

(d) "Care Management Organization" means a Care Management Organization as that term is defined in Wis. Stat. § 46.2805(1)

(e) "Home care" means supportive home care, personal care for Consumers who require assistance to meet their daily living needs, ensure adequate functioning in their home and permit safe access to the community.

(f) "Provider" means an individual hired by a Consumer to provide homecare to the Consumer.

**Section 2.** 46.2898 (2) of the statutes is created to read:

46.2898 (2) (a) The Wisconsin Quality Home Care Authority is established as an independent authority for the purposes set forth in this Act. For no purposes under state or federal law, other than as specifically set forth in this Act, shall the Authority be considered part of the State, any participating County, or any other political subdivision of a County or the State. No officer, employee, agent, or servant of the Authority, including Providers, shall be or shall be deemed to be an officer, employee, agent, or servant of the State, any participating County, or any Care Management Organization for any purpose.

(b) The Authority shall be governed by a Board of Directors. A majority of

the members of the Board shall be Consumers, representatives of Consumers or Consumer advocates. The term of each Consumer Board member shall be for three (3) years except as provided in subsection 5.(d). The Board shall consist of:

1. The Secretary of the Department or his or her designated representative from within the Department;
2. The Secretary of the Department of Workforce Development or his or her designated representative from within the Department;
3. One representative from each Care Management Organization;
4. One representative from each County electing to participate as permitted by subsection (7)(d).
5. Consumers, representatives of Consumers or Consumer advocates appointed by the Governor. In making these appointments, the Governor shall seek to insure representation of both elderly and disabled Consumers, urban and rural Consumers and long-term Consumers. Consumers reflecting the racial and ethnic diversity of the State, and Consumers from different regions of the State.

(c) The Governor shall designate one (1) member on the Board as its chair to serve in that capacity at the pleasure of the Governor;

(d) The terms of the initial Consumer Board members shall be one (1), two (2), and (3) years for every three Consumer Board members appointed by the Governor.

(e) The members of the Board shall receive no compensation for the performance of their duties. A Board member may engage in private or public employment, or in a profession or business, except to the extent prohibited by law. The Authority may reimburse members of the Board for actual and necessary expenses incurred in the discharge of their official duties as provided by the Board.

**Section 3.** 46.2898(3) of the statutes is created to read:

46.2898(3) The Authority's duties shall include:

(a) Assessing the size, quality and stability of the home care workforce in Wisconsin and the ability of the existing workforce to meet the growing and changing needs of both aging and disabled Consumers.

(b) Facilitating the provision of quality home care services to Consumers



who elect to jointly employ Providers with the Authority.

(c) Supporting Consumers' joint employment of Providers. The relationship between the Authority and Providers shall be consistent with the principles of Consumer self-direction. Nothing in this Act shall impair Consumers' right to select, direct, and remove Providers as long as the Provider selected by the Consumer meets the minimum requirements established in accordance with law. [The Washington State Authority is able to promulgate administrative rules to set qualifications and standards. There is nothing in this language that gives the Authority the authority to establish minimum requirements and there aren't any currently in statutes and very little in rule.]

(d) Assisting Consumers in making the decision of whom to employ to provide home care services.

(e) Facilitating and coordinating orientation processes to assist Providers in the performance of authorized services, with the consent of and direction from Consumers or their representatives.

(f) Developing recruitment and retention programs to expand the pool of Providers qualified and available to provide home care services to Consumers.

(g) Assessing, in cooperation with other public agencies, existing mechanisms for preventing abuse and neglect of Consumers in the home care setting and recommending improvements to those agencies and the Legislature.

(h) Establishing and maintaining one or more registries of Providers that Consumers requiring services, Care Management Organizations, and participating Counties may use to locate qualified, available Providers.

(i) Developing and applying a methodology and protocols for qualifying Providers who seek placement on a registry maintained by the Authority and removal of Providers from the registry, including developing a review process for those denied a listing or removed from a registry.

(j) Informing Consumers, or their representatives, of the background and qualifications of potential Providers.

(k) Developing a system to facilitate the provision of routine, emergency, and respite referrals for the provision of home care services through the creation of a pool of back-up Providers, with the capacity to arrange for on-call service available 24 hours a day, 7 days a week.

(l) Developing methods of ongoing communication and information sharing with Providers and Consumers that support and facilitate a positive

relationship between Providers and Consumers and their representatives.

(m) Assisting Providers with addressing barriers to employment by supplying Providers with information, referrals, and access to services supportive of Providers' employment such as childcare and transportation.

(n) Facilitating and coordinating both initial and continued training of Providers.

(o) Soliciting Providers's views concerning the effective and efficient provision of homecare through the process of collective bargaining described in subsection (5) or through other processes if Providers have not selected a representative.

**Section 4.** 46.2898 (4) of the statutes is created to read:

46.2898(4) (a) The Authority shall possess all powers specifically enumerated in this Act and necessary and proper to the carrying out of its duties as specified in this Act.

(b) The Authority shall have authority to:

1. adopt reasonable rules to govern its proceedings and to carry out its duties as specified in this Act;

2. employ, appoint, engage, compensate, transfer, or discharge necessary personnel, subject to the personnel policies established by the Authority;

3. retain counsel and other agents;

4. make or enter into contracts, including, but not limited to, contracts for the provision of legal or accounting services, and award grants for the purposes set forth in this Act;

5. acquire, own, hold, operate, maintain, lease, or sell real or personal property and dispose of, divide, or distribute any property, including, but not limited to, equipment and office space;

6. sue and be sued in its own name;

7. accept gifts, grants, assistance funds, or bequests and use the same for the purposes set forth in this Act; and

8. collect fees for its services.

**Section 5.** 111.70(1) (j) of the statutes is amended to read:

111.70 (1) (j) "Municipal employer" means any city, county, village, town, metropolitan sewerage district, school district, long-term care district, the Wisconsin Quality Homecare Authority, or any other political subdivision of the state, or instrumentality of one or more political subdivisions of the state, that engages the services of an employee and includes any person acting on behalf of a municipal employer within the scope of the persons authority, express or implied, but specifically does not include a local cultural arts district created under subch. V of ch. 229.

**Section 6.** 46.2898 (5) of the statutes is created to read:

46.2898 (5) (a) Consumers shall retain the right to hire, fire, and supervise Providers.

(b) Solely for the purpose of the application of the Municipal Employment Relations Act, Wis. Stat. §§ 111.70 and 111.71, Providers shall be considered "municipal employees" employed by the Authority.

(c) In accordance with the policy of avoiding excessive fragmentation set forth in Wis. Stat. § 111.70(4)(d)(2).a. and in order to achieve the purposes of this Act, the appropriate collective bargaining unit of Providers, as that term is used in Wis. Stat. § 111.70(4)(d)(2).a. shall be a state-wide unit. Providers who are related to or members of the family of the Consumer to whom they provide home care services shall not for that reason be excluded from the unit. The Wisconsin Employment Relations Commission shall conduct an election, by mail ballot, to determine whether an organization shall be designated the exclusive bargaining representative as defined in Wis. Stat. §§ 111.70 in accordance with its rules.

(d) Agreements. 1. It is the declared intention under this subchapter that the negotiation of collective bargaining agreements and their approval by the parties should coincide with the overall fiscal planning and processes of the state.

2. Agreements shall coincide with the fiscal year or biennium.

3. Any tentative agreement reached by the Authority's representatives and any labor organization representing Providers shall be submitted to the full Authority for its approval. If the Authority approves the tentative agreement the Governor shall, at the Department's request and after official ratification by the labor organization, introduce a bill or companion bills, to be put on the calendar or referred to the appropriate scheduling committee of each house of the

legislature, approving that portion of the tentative agreement which requires legislative action for implementation such as wage adjustments, changes in fringe benefits and any proposed amendments, deletions or additions to existing law. Such bill or companion bills are not subject to §§13.093(1), 13.50(6)(a)(b), and 16.47(2). The Authority shall accompany the introduction of such proposed legislation with a message that informs the legislature of the Authority's concurrence with the matters under consideration and which recommends the passage of such legislation without change. If the legislature does not approve without change that portion of the tentative agreement described in this subsection, the tentative agreement shall be returned to the parties for re-negotiation.

(e) All methods of peaceful settlement of disputes set forth in Wis. Stat. §111.70 (4)(cm) shall be available to resolve disputes concerning the terms of a collective bargaining agreement covering Providers except that interest arbitration under Wis. Stat. § 111.70(4)(cm)(6) shall not be available.

(f) Upon final approval of the economic terms of any agreement, the legislature shall consider such economic terms in appropriating funds to be used for the provision of home care to Consumers and the Department shall consider such terms in providing funding on a capitated payment basis to Care Management Organizations for the provision of services under Wis. Stat. 46.284(5)(a) and in allocating funds to Consumers for the purchase of home care.

(g) The Department and other agencies of the State of Wisconsin, Care Management Organizations, Consumers, participating Counties, and any fiscal intermediaries acting as their agents, shall cooperate in the implementation of any agreements reached by the Authority and any representative of Providers, including making any payroll deductions authorized by the agreements which can lawfully be made pursuant to Wis. Stat. §§ 111.70 or other applicable laws.

(h) Violation of the prohibition of strikes contained in Wis. Stat. § 111.70(4)(L) by any Provider may result in ineligibility to serve as a Provider.

(i) Providers shall not be considered employees of the State of Wisconsin, any Care Maintenance Organization or Organizations, or any participating County or Counties for any purpose.

**Section 7.** 46.2898 (6) of the statutes is created to read:

46.2898 (6) (a) The Authority shall establish the terms and conditions of employment of all Providers except as expressly provided otherwise in this Act.

(b) All Care Management Organizations, the State, Consumers and

participating Counties providing or otherwise paying for the provision of home care to Consumers shall compensate Providers and otherwise treat them in accordance with policies established or agreements entered into by the Authority in accordance with this Act.

(c) Care Management Organizations, the State, Consumers and participating Counties providing or otherwise paying for the provision of home care to Consumers shall insure that (i) the Authority is informed of the identity of any Provider retained by a Consumer, including the Provider's name, address, and telephone numbers, and (ii) the Provider is informed that the Authority is the joint employer of all Providers with authority to establish all terms and conditions of their employment not set by the Consumer.

(d) Any County providing or paying for the provision of homecare to Consumers under other than or in addition to the Family Care program may elect to participate in the Authority by vote of their Board of Supervisors, except that any county participating in a Quality Home Care Authority pursuant to an intergovernmental agreement between the County and the State of Wisconsin shall be deemed to have elected to participate in the State-wide Authority. Notwithstanding the limitations in 2(b), the sitting members of the Board of Directors of any such existing Quality Home Care Authority shall serve as members of the Board of Directors of the State-wide Authority for the duration of their unexpired terms.

1. Counties electing to participate in the Authority shall so notify the Authority in writing.

2. Participating County can withdraw from participation, by vote of their Board of Supervisors or at the discretion of an elected County Executive, with one-year's written notice to the Authority.

3. In Counties that have elected to participate in the Authority, the term Consumer shall, in addition to the persons identified in the definition of that term in subsection (1)(b), include all persons receiving home care as a beneficiary under the State of Wisconsin's Medicaid program, including any programs established pursuant to waivers of requirements of the federal Medicaid program granted by the United States Department of Health and Human Services, or any other State funded program, if the County pays the Provider, directly or through a fiscal intermediary, or the County awards funds to the Consumer who pays the Provider, directly or through a fiscal intermediary.

**Section 8.** 46.2898 (7) of the statutes is created to read:

46.2898 (7) The Authority, the Department, and all other public agencies shall take all actions reasonably necessary to obtain any approval from the

secretary of the United States Department of Health and Human Services needed to implement any part of this Act or to insure continued federal funding of any program governed by this Act.

**Section 9.** If any section, subsection, subdivision, paragraph, sentence, or clause of this Act is held to be invalid or unconstitutional, such decision shall not affect any remaining portion, section, or part thereof which can be given effect without the invalid provision.

**Section 10.** This Act shall become effective on . . . .

## **D R A F T – 12/30/2008**

### **Quality Home Care Commission – DHS/DOA/OSER Proposal**

#### **Definitions**

1. “Authority” – Quality Home Care Authority
2. “Consumer” – Means an adult participant in the Family Care program under s. 46.2805 through 46.2895 or in a program operated under a waiver from the secretary of the federal department of health and human services under 42 USC 1396n (c).
3. “Department” - DHS
4. “Home care” – means personal care and supportive home care services (reference other definitions or give Department authority to clarify in rule using emergency rule making authority)
5. “Provider” means an individual employed directly by a consumer under this chapter to provide home care to the consumer.

#### **Applicability**

1. Applies only to independent providers of home care (home care will be defined by the Department by rule).
2. Applies to adult participants in home and community-based long-term care programs authorized by waivers from the secretary of the federal department of health and human services under 42 USC 1396n (c) and Family Care/Family Care Partnership and PACE which are operated by waivers under 42 USC 1396n (b) & (c), who are self-directing some or all of their home care.

### **Structure and Appointment of the Quality Home Care Authority**

#### ***Proposed Structure***

1. Create a Quality Home Care Authority (QHCA).
2. The Board of Directors, a majority of whose members must be consumers or family members of consumers, will be appointed by the Governor as follows (length of term?):
  - a. the Secretary of the Department of Health Services (Department) or his/her designee;
  - b. the Secretary of Department of Workforce Development or his/her designee?;
  - c. a representative of each house of the Legislature;
  - d. a representative of Family Care managed care organizations;
  - e. a representative of county social/human services agencies, 51 Boards, etc. from counties that do not have the Family Care program;
  - f. a representative of the Board for People with Developmental Disabilities;
  - g. a representative of the Council on Physical Disabilities;
  - h. a representative of the Council on Mental Health;
  - i. a representative of the Aging Advisory Committee of the Dept of Health Services;
  - j. ## current or former consumers [or reps of consumers?], e.g., guardians] of home care.
3. The Board of Directors will elect an executive committee (do we want to specify who must be part of the executive committee?).

4. The Board/executive committee (??) may appoint an executive director who is not a member of the board and serves at the pleasure of the board and may hire additional employees or engage in contracts for services to carry out the duties of the QHCA. Employees of the Authority are not state employees (this is consistent with the SEIU language). [The language establishing some Authorities cap the salary of the Executive Director related to an executive salary group under s. 20.923 (1)]

#### ***Duties of QHCA***

1. Establish and maintain one or more registries of home care providers and provide referral/matching services for consumers in need of home care.
2. Apply qualification criteria for home care providers who seek placement on the registry and develop criteria and an appeal process for denial or removal of a provider from the registry consistent with the terms of Wisconsin's home and community-based waivers and Medicaid State Plan. [May have access to Medicaid appeal process if the person is being denied the opportunity to be a Medicaid provider.]
3. Develop and operate recruitment and retention programs to expand the pool of providers.
4. Provide orientation activities and skills training for home care providers.
5. Provide training for consumers in the duties and responsibilities of employers and skills needed to be effective employers.
6. Inform consumers of the background and qualifications of providers on the registry and providers identified by consumers for employment.
7. Develop and operate a system of backup and respite referrals to providers, including a 24/7 on-call service for consumers.
8. Report annually to the Governor on the number of providers on the registry and/or providing services under the auspices of the QHCA.
9. Other activities to improve supply and quality of direct care workers.

**Collective Bargaining** (see OSER's Suggested Revisions for Quality Home Care Commission for details)

#### ***Ability to Organize***

1. Create a statewide collective bargaining unit of independent providers.
2. Use the "showing of interest" provisions of SELRA to conduct an election for exclusive representative.
3. Limit bargaining to wages and fringe benefits. Specifically exclude certain issues from collective bargaining.
4. Apply bargaining provisions of SELRA, specifically provisions regarding interest arbitration.
5. Strikes would be prohibited per s. 111.89.



### ***Duties of the Department***

1. Serves as employer solely for purposes of collective bargaining with the exclusive representative. [Would not need provisions in the SEIU draft regarding QHCA as a municipal employer] Consumer is the “at-will” employer.
2. Bargain with collective bargaining representative selected by providers, with assistance from OSER and the advice of the QHCA and Advisory Council.
3. Tentative agreement is submitted by DHS (with assistance from OSER) to JCOER for approval or disapproval. If not approved, it is sent back to parties for renegotiation. If approved, it goes to each house of the legislature for a vote, then to the Governor.

**OSER'S SUGGESTED REVISIONS  
FOR  
QUALITY HOME CARE COMMISSION**

**SUBJECTS OF BARGAINING**

OSER recommends that subjects of bargaining for the exclusive representative of Providers be limited wages and fringe benefits just like supervisors under SELRA (if they formed a bargaining unit). See section 111.83(5), Wis. Stats., stating that: a petition "for a statewide collective bargaining unit of professional supervisors" may be considered but the certified representative "may not bargain collectively with respect to any matter other than wages and fringe benefits as provided in s. 111.91(1)." This section would be an exception to the traditional subjects of bargaining of wages, fringe benefits, hours and conditions of employment in section 111.91(1). The bargaining unit for Providers should also be statewide.

Prohibited subjects of bargaining should include everything mentioned in 111.92(2), AND policies, work rules, hours, terms and conditions of employment (establishing qualifications and duties, selecting, hiring, establishing duties, scheduling, instructing, supervising, evaluating, and firing), and ability of Consumer and Commission to operate in the most appropriate and efficient manner as they determine.

**EXCLUSIVE REPRESENTATIVE**

OSER recommends applying SELRA regarding the necessary "showing of interest" in order to conduct an election for exclusive representative. SELRA requires a 30% showing of interest (sec. 111.83 (5) & (6) Wis. Stats.) as opposed to the 10% listed in the bill draft. Maintenance of membership or fair share elections should also be conducted pursuant to the same sections in SELRA.

**BARGAINING WAGES: MERA vs. SELRA**

OSER highly recommends that any collective bargaining rights under the bill be pursuant to SELRA as opposed to MERA provisions. Major differences between them are as follows:

MERA – allows for interest arbitration in which an arbitrator issues binding decisions on wages when the parties are unable to reach agreement at bargaining. Section 46.2898(5)(e) of the bill draft currently provides for interest arbitration pursuant to MERA. OSER recommends this section be deleted.

SELRA – does not allow a subjective arbitrator to decide wage agreements. Instead, SELRA allows for voluntary mediation of the dispute (111.87) OR if the parties jointly agree, they may engage in a fact finding process (111.88) to resolve the dispute. Neither process is mandatory. This process encourages the parties to get back to the bargaining table to resolve differences.

If SELRA is chosen over MERA, the draft bill should be modified to remove all sections of MERA and instead refer to appropriate sections of SELRA

Consider renaming "Commission", "QHCC" or "Authority" to avoid confusion with the Wisconsin Employment Relations *Commission* in SELRA.

## STRIKES

Strikes by Providers should be strictly prohibited similar to section 111.89 Wis. Stats. To create a stronger deterrent to striking Providers, the language in section 46.2898(5)(h) of the draft bill should be changed from "may" to "will".

## JOINT EMPLOYMENT

The bill must clearly delineate each co-employer's responsibilities. The definition section of the bill could make this clear. For example:

"Employer" means either "DHS" or the "Consumer" depending on the purpose served.

"DHS" is the employer solely for the purposes of collective bargaining (with assistance from OSER) with the exclusive representative of the Providers, and for that reason, Providers are not employees of the State, DHS or its political subdivisions for any purpose. Add "DHS" to the language in 46.2898(5)(i)

"Consumer" is the "at-will" employer solely for purposes of establishing qualifications and duties, selecting, hiring, establishing duties, scheduling, instructing, supervising, evaluating, and firing (removing) Providers. While a co-employer role seems to be a better fit, it should at least be considered whether "Consumer" should be defined as merely a "person to whom an individual provider provides services" as they are in Washington. While this may avoid some lawsuits against the Consumer, it could also result in DHS being named the employer in more lawsuits.

As long as the bill makes it clear that Providers' employment is "at will", there is no need to mention any probationary period since Providers could be terminated for any reason so long as the reason is not unlawful. Similarly, since employment is "at will", there is no need to negotiate a grievance process.

"Commission's" or "Authority's" duties should be specifically spelled out and the phrase "terms and conditions of employment" in 46.2898(6)(a) and (c) should be deleted. "Terms and conditions of employment" are set by the Consumer (see above).

## FUNDING WAGE INCREASES

Funding mechanism should be created jointly by DHS and the state budget office for inclusion in the Governor's budget for any QHCC budget negotiations. This would establish a budget ceiling that would be akin to a compensation reserve.

Language should be included stating that negotiated wage rates for Providers cannot exceed agency workers (WSEU-Resident Care Technician) rates to avoid a two-tiered rate system that would be used against the Commission/Authority in negotiations.

OSER recommends some threshold of working hours, similar to the State of Washington, before the Provider receives benefits. Their law states: "Effective January 1, 2005, or as otherwise provided for in Section 1, those home care workers employed for at least three (3) consecutive months and who work a minimum of eighty-six (86) hours per month, and who are not otherwise eligible to receive health care benefits through other family coverage, other employment-based coverage or military or veterans coverage, shall be considered eligible."

## TENTATIVE AGREEMENT PROCESS

Process should mirror section 111.92 Wis. Stats., in many respects.

DHS Secretary should be authorized to reach Tentative Agreement (TA) with the Union, and after ratification by the Union, the TA is submitted by DHS (with assistance from OSER) to JCOER for approval or disapproval. If not approved, it is sent back to parties for renegotiation. If approved, it goes to each house of the legislature for a vote, then to the Governor.

Following provisions should also apply:

111.92(2) – No portion of any TA shall become effective separately.

Note: section 46.2898 (5) (f) of the draft bill refers only to “economic” terms, whereas, it is suggested that it merely state “terms” since, according to 111.92(2), no portion of any TA can become effective separately.

111.92(3) – Agreements shall coincide with the fiscal year or biennium.

111.93(4) – Intent is that negotiation & approval coincide with overall fiscal planning processes.

	Treatment of Authority	Included in Requirement = Yes/No
7.33(1)(c)	Definition of state agency to include authorities for purposes of serving as an election official	No
* 13.172(1)	Definition of agency including authorities regarding submitting reports to the legislature	Yes
13.48(10)(b)3m	Exemption for authority from having to get Building Commission approval for construction projects	No
13.48(12)(b)4	Exemption for authority from getting Building Commission approval to build on state-owned land	No
x 13.48(13)(a)	Compliance with state laws and codes for building to include authorities	Yes
13.62(2)	Definition of agency to include authority for lobbying regulation	Yes
13.94(1)(b) and (g) and (4)(a)1	LAB audit required, report to them on receivables and LAB has authority to audit including authorities	Yes
13.95	Duties of LFB	Yes
16.002(2)	Definition of department to exclude authorities	Yes
16.004 (4),(5) and (12)(a)	DOA secretary has access to audit including authorities, all including authorities must cooperate, exempts the UW and Fox River from rules regarding surveillance of employees.	Yes
16.008(2)	Requires the authority to pay for extraordinary police service	No
16.01(1)	Definition of agency includes authorities for purposes of the Women's Council	No
16.045(1)(a)	Definition of agency to include authorities for purposes of use of gasahol	No
16.41(4)	Agencies to keep financial records including authorities	Yes
16.417(1)(b)	Definition of agency includes authorities for purposes of preventing dual employment	No
16.52(7)	Exempts authorities from keeping a petty cash fund	Yes
16.528(1)(a)	Definition of agency excludes authorities for purposes of determining interest in late payments	Yes
16.53(2)	Exempts authorities from rules on improper invoices	Yes
16.54(9)(a)1	Exempts authorities from indirect cost determination for FED	Yes
16.611(2)(a) and (c)	DOA to do rules for the UW authority to record public records on optical scanners	No

?

?(12)(a)

?

16.70(2)	Authorities included in purchasing rules	Yes
16.75(1m)	Authorities except UW to issue contracts on life cycle analysis	Yes
16.765(1) etc.	Authorities required to have nondiscrimination clause in contract and follow certain procedures	Yes
16.838(1)(b)	Authority subject to rules on historically significant furnishings	No
16.845(1)	Authority subject to rule on letting others use as a public building	No
16.85(2) and (16)	Excludes authority from use of DOA engineering services but requires approval of building projects for Fox River	No
16.865(8)	Excludes authorities from risk management charges	Yes
19.42(5) etc	Code of ethics for public officials to include authorities	Yes
20.9275(1)(g)	Definition of agency includes authorities for purposes of applying for a pregnancy prevention grant	No
23.175(1)(b)	Definition of agency to include authorities for purposes of state trails	No
25.50(1)(d)	Definition of local government to include authorities for purposes of the local government pooled investment fund	No
40.02(54)	Definition of agency for purposes of ETF	No
70.11(41)	Exempt Fox River from property tax payment	Yes
71.26(1)(be)	Exempt from income and franchise tax	Yes
77.54(9)(a)	Exempt from sales and use tax	Yes
100.45(1)(dm)	Sale of ozone depleting refrigerant	Yes
101.055(2)(a)	OSHA protections cover employees	Yes
101.177(1)(d)	Sale of ozone depleting refrigerant	Yes
103.49(1)(f)	Wage rate on state jobs	No
230.03(3)	Exempt authority from state hiring process	No
281.75(4)(b)3	Authority can't make a claim for contaminated well water	No
285.59(1)(b)	More ozone-depleting refrigerant language	Yes
704.31(3)	Exempt authority from remedy for default on leases	No

**Propsom, Gail F - DHS**

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**From:** Propsom, Gail F - DHS  
**Sent:** Wednesday, January 14, 2009 8:27 AM  
**To:** Bove, Fredi-Ellen E - DHS; Forsaith, Andrew C - DHS; Holmes, Rea L - DHS  
**Subject:** RE: Budget request BB0361

Thanks Fredi. I think the answer to the first part of Q. 3 should be no. In fact I don't think a provider needs to ever be on the registry if they don't want to be available to other consumers. In my mind being on the registry is different than being represented by the union for bargaining. That would be the requirement.

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**From:** Bove, Fredi-Ellen E - DHS  
**Sent:** Tuesday, January 13, 2009 3:21 PM  
**To:** Propsom, Gail F - DHS; Forsaith, Andrew C - DHS; Holmes, Rea L - DHS  
**Subject:** RE: Budget request BB0361

Gail—Thank you for reviewing the material. I made some revisions to the question related to eligible providers. Please note that you did not provide an answer to the first part of the third question. I agree that it would be most productive to have Neil review the draft when it is available.

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**From:** Propsom, Gail F - DHS  
**Sent:** Tuesday, January 13, 2009 11:15 AM  
**To:** Forsaith, Andrew C - DHS; Bove, Fredi-Ellen E - DHS; Holmes, Rea L - DHS  
**Subject:** FW: Budget request BB0361  
**Importance:** High

I just received this e-mail from Laurie with questions about the Quality Home Care Authority language. She and I are meeting with LRB tomorrow AM. I've provided what I think are the answers to the questions in red. Please let me know if I assume correctly. I don't know if there is time for Neil to review and respond to these questions before we meet tomorrow. It seems like a better use of his time to review an actual draft. Gail

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**From:** Palchik, Laurie A - DOA  
**Sent:** Tuesday, January 13, 2009 10:58 AM  
**To:** Propsom, Gail F - DHS  
**Subject:** FW: Budget request BB0361

FYI – LRB questions.

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**From:** Dodge, Tamara [mailto:Tamara.Dodge@legis.wisconsin.gov]  
**Sent:** Tuesday, January 13, 2009 10:50 AM  
**To:** Palchik, Laurie A - DOA  
**Subject:** RE: Budget request BB0361

Laurie –

Great. We are still set for 9:00 tomorrow. I have a few questions that I can send over now. I may have additional questions later in the day.

I presume that a goal is to ensure that the authority's activities will in no way jeopardize waiver funding from the federal government. yes



With that thought in mind, I was wondering who will set the qualifications for a provider to be entered on the registry. DHS? The authority? The authority cannot make rules the same way DHS can so I am wondering, if the authority must set the qualifications, whether there should be some guidelines in the statutes. I think the Department should set the qualifications. We already have some standards in place for personal care and waivers and could expand on those. They would need to be consistent with anything we put in our waivers.

If there are qualifications for entry on the registry, which will be used to justify MA reimbursement, will the provider need to be on the registry before the individual hires them? The original draft language implied it would be possible for a consumer to hire a provider and then inform that provider that he or she is now under the auspices of the authority. Might this be a problem for MA waiver funding if the provider hired is not qualified? The waiver care manager or IRIS consultant (or FSA) should be monitoring the qualifications of people hired by folks who are self-directing for compliance with waiver standards. I don't think the registry should have higher standards.

For clarification, the authority would only cover independent providers providing non-professional services, correct? yes Home health agencies and personal care provider agencies would not have to comply with any laws pertaining to the authority. Any nurses or health care providers (like a physical therapist) would not have to comply with any laws pertaining to the authority. Is that correct? correct

Should the current provision regarding the QHCC, s. 46.48 (9), be repealed? I assume that the current agreement in place in Dane County would be absorbed into the new authority? Is that correct? yes

- The individual consumers who would use the authority's services are only those on MA waivers, correct? yes that's what DHS and DOA agreed to. If I understand, only counties, independent living centers, and home health agencies can provide home-based services for medical assistance (non-waiver) recipients. Is my thinking correct? Under current statute and rule, that is correct. However, an administrative rule change is pending that would expand the types of entities eligible to provide personal care to include tribes. In addition, a statutory language change is under consideration for the Governor's 09-11 biennial budget to expand further the types of entities eligible to provide personal care.

Should county departments be required to declare whether they will use the authority's services? If so, which county departments? no *if opting in to authority & to dept. approval of county board*

I assume that care management organizations should be required to hire through the authority's registry if they are hiring individual providers, correct? The MCOs aren't hiring the providers, the Family Care members are. This only applies to workers hired by consumers.

I was talking to Debora Kennedy of our office about this draft and particularly the concern of jeopardizing waiver funding. She was wondering whether this draft idea has been run by Neil Gebhart at DHS. If it hasn't, could we have him review a draft or could I ask him if there are any problems with the waiver funding and this draft. would seem best to have him review an actual draft.

- Tami

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**From:** Palchik, Laurie A - DOA [mailto:laurie.palchik@wisconsin.gov]  
**Sent:** Tuesday, January 13, 2009 9:26 AM  
**To:** Dodge, Tamara  
**Cc:** Propsom, Gail F - DHS

1/14/2009



**Subject:** RE: Budget request BB0361

Hi Tami,

Gail Propsom (DHS) and I are still planning to come over at 9 am tomorrow morning. Just let us know if you can send over any questions prior to the meeting so we can review for responses. Thank you!

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**From:** Dodge, Tamara [mailto:Tamara.Dodge@legis.wisconsin.gov]

**Sent:** Thursday, January 08, 2009 4:01 PM

**To:** Palchik, Laurie A - DOA

**Subject:** Budget request BB0361

Laurie,

I received the budget draft request for the Wisconsin Quality Home Care Authority. I would like to go over a few questions with you. I would appreciate if you could come over to the LRB office sometime next week. That way, Cathlene, who will be drafting the collective bargaining portion, can participate as well. I am thinking I should have a collected all of my questions by Tuesday, January 13. Let me know when you are available on Tuesday or later. My schedule is pretty open next week.

Thanks.

Tami

Tamara J. Dodge

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# RESEARCH APPENDIX - Draft Transfer/Copy Request Form

- Atty's please complete this form and give to Mike Barman

(Request Made By: TJD) (Date: 01 / 26 / 2009)



☐ Please transfer the drafting file for

2009

~~2007~~ LRB 1556 to the drafting file

for **2009 LRB** 1382

The final version of the 2007 draft and the final Request Sheet will copied on yellow paper, and returned to the original 2007 drafting file. A new cover sheet will be created/included listing the new location of the drafting file's "guts".

For research purposes, because the 2007 draft was incorporated into a new 2009 draft, the complete drafting file will be transferred, as a separate appendix, to the new 2009 drafting file. This request form will be inserted into the "guts" of the 2009 draft. If introduced, the appendix will be scanned/added to the electronic drafting file folder.

**--OR--**

☐ Please copy the drafting file for

2009 LRB \_\_\_\_\_ / \_\_\_\_\_ (include the version) and place it in the

drafting file for **2009 LRB** \_\_\_\_\_

For research purposes, because the original 2009 draft was incorporated into another 2009 draft, the original drafting file will be copied on yellow paper (darkened/auto centered/reduced to 90%) and added, as a separate appendix, to the new 2009 drafting file. This request form will be inserted into the "guts" of the new 2009 draft. If introduced the appendix will be scanned/added to the electronic drafting file folder.

The original drafting file will then returned, intact, to its folder and filed. For future reference, a copy of the transfer/copy request form will also be added to the "guts" of the original draft.